



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **201215013**
Release Date: 4/13/2012
Date: January 18, 2012
UIL Code: 501.32-00
501.32-01
501.33-00

Contact Person:
Identification Number:
Contact Number:
Employer Identification Number:
Form Required To Be Filed:
Tax Years:

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

Letter 4038(CG) (11-2005)
Catalog Number 47632S

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number:
Release Date: 4/13/2012
Date: January 18, 2012
UIL Code: 501.32-00
501.32-01
501.33-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

Letter 4038(CG) (11-2005)
Catalog Number 47632S

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

**DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224**

Date: November 28, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = Date
C = State

UIL:

501.32-00
501-32-01
501.33-00

Dear

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

Issues

- Do you qualify for exemption under section 501(c)(3) of the Code? No for the reasons described below.

Facts

You were incorporated on B as a non-profit corporation under C law. Your Articles of Incorporation ("Articles") state, in Article I, that your specific purpose is "charitable." Your Bylaws state in Article 1, Section 1.02 that your purposes are "exclusively religious, charitable, scientific, literary and educational purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code." Section 1.03 provides that your purpose is to provide families with the

Letter 4036(CG) (11-2005)
Catalog Number 47630W

American dream of homeownership and to maintain those homes through financial literacy and homeownership programs.

You have three members on your Board of Directors, none of whom are compensated as employees. Two of your members have experience in the housing construction industry. Your funding is expected to be solely received through grants and donations. Volunteers and employees will conduct your activities. Participants are limited to individuals and families at or below the poverty level. Any fees charged will be affordable and will be waived for those unable to pay.

You have three listed activities. For the first activity, you expect to spend 75% of your time on home ownership and low income housing services. You will provide affordable housing and homeownership information sessions and grants supplied through your state housing trust fund and HUD to low income individuals living in your state. You will also provide foreclosure assistance to individuals in danger of losing their homes. Your target clients are those individuals of low-income who are having financial problems. You will not charge fees for your services. Your proposed affordable housing projects will have at least 75% of the units occupied by residents that qualify as low income and either 20% occupied by residents that are also very low income or 40% occupied by residents that also do not exceed 120% of the areas very low income limit.

Your homeownership classes will provide important information regarding foreclosure, down payment and closing costs that a homeowner should know before and after purchasing a home. In addition, you will provide information regarding predatory lending practices including how to prevent this type of activity. Finally, you will connect your clients with agencies that follow and comply with government imposed mortgage limitations or otherwise make the cost to purchase a home affordable to low and very low income residents.

Another component of your home ownership and housing services include financial literacy classes to increase financial comprehension and budgeting skills of young adults in poverty stricken areas of the state. You will provide one-on-one assessment and tutoring in financial comprehension and budgeting. In addition, you will conduct planning and savings sessions/activities 3 days per week as well as debt and investment awareness sessions.

Your second activity is providing housing renovations for the poor who live in homes that are unsafe for 10% of your time.

Your third activity is providing transitional housing for the homeless including those who have recently been incarcerated, in drug/alcohol rehabilitation programs or involved in crisis situations for 15% of your time. You will assess new housing admissions for appropriate service delivery so all residents have a stability plan in place with short and long term goals. Programs offered to residents will include educational classes such as GED, ESP, vocational skills, health related, life skills, substance abuse prevention and employment. You will provide assistance to clients in obtaining permanent housing.

You submitted information regarding your state housing trust fund which provides financial assistance for the development, rehabilitation and acquisition of affordable housing for low-income and very low income households. The funds are delivered through partnerships with other governmental entities, qualified non-profit sponsors and for-profit sponsors. Approved activities include emergency repair, owner-occupied rehabilitation, homeownership acquisition, group homes, supportive housing and rental housing. You also submitted a blank Emergency Housing Application to apply for funding under the housing trust fund. Finally, you submitted copies of information regarding homeless assistance programs from HUD's website.

In response to requests for additional information, you stated that your homeownership information sessions are a new program and you do not have any curriculum or class schedules yet. You do not know how the sessions will be structured; however, you will partner with HUD and another section 501(c)(3) organization for training purposes. You will become certified by HUD to conduct housing counseling, but have not applied and will not do so until after exemption is granted.

We requested information about your role in administering funds under the state Housing Trust Fund and you submitted the same copies of the fund's basic application procedures with no indication of how you would complete the application process. The activities and budgets have not been planned yet.

You were also unable to provide details regarding your proposed transitional housing for the homeless. You stated that the program will begin after you finish building your infrastructure and get your certification from the housing trust, but you must first secure 501(c)(3) status.

Finally, you were unable to provide details regarding your financial literacy sessions. You indicated they will consist mainly of budgeting and savings issues for low income families. You do not have a fee planned but if you decide to charge a fee it will be affordable. You do not have anyone to conduct the services or have a curriculum yet. None of your board members are involved with "credit counseling or credit repair and you will have nothing to do with credit cards."

Later you clarified that you plan to partner with another section 501(c)(3) organization that will provide the classes and curriculum and you will ensure that low income individuals get to the classes. You also stated that the state housing trust fund money can only be used for direct services and no operational cost is allowed. Only low-income persons are eligible for your programs. Low income will be determined according to state housing regulations.

You further clarified that once you are contacted by low income individuals in your community, you will set up an interview and then counseling sessions (i.e., HUD training). You will provide transportation for these individuals to financial literacy classes that are already being held in your community. You submitted copies of HUD delivery of counseling requirements and information. However, you did not explain your educational methodology or how you would meet the HUD requirements. Still, no information was submitted regarding how you plan to administer funding under the state housing trust fund.

You further explained that you will not be conducting financial literacy sessions, but will just refer those individuals to other non-profits and will reach out to the public through churches and title one schools. Now these referral activities will constitute 90% of your time, the other 10% will be devoted to home renovations for low income persons living in unfit homes.

In response to a request to clarify what activities you will actually conduct as part of this initial determination of tax exempt status and to provide detailed information those activities, you just indicated that your previously described three activities were still those you were seeking exempt status for and that you were still in the planning stages for all your activities.

You provided more detailed objectives for your financial counseling sessions, but still could not provide any sample educational materials or agendas to substantiate your educational methodology. Your first-time homebuyer's sessions will entail trained counselors working with potential homebuyers to develop a plan of action toward their goal of home ownership. Readiness training will include creating a budget to set aside money for purchase of a home and contacting creditors about disputed collection accounts. Your homebuyer training program will be held monthly at your local library and covers the basics of buying a home including fair housing laws, consumer credit, shopping for a home, mortgage process, closing process, home insurance and home maintenance. Your home purchasing sessions will educate individuals on available funding for first time homebuyers through your referral system to agencies such as HUD, housing trust fund and FHA (no referrals are made to banks/mortgage companies). Lastly, your foreclosure prevention offers training on how to maintain the new home, manage a new budget and avoid foreclosure; however, you do not have a curriculum or agenda. You do not have educational materials, class schedules or counselor/instructor information for any of your programs.

Law

Section 501(c)(3) of the Internal Revenue Code ("Code") provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable, educational and other purposes, provided that no part of the net earnings inure to the benefit of any private shareholder or individual.

Section 1.501(a)-1(a)(2) of the Income Tax Regulations ("regulations") states that an organization is not exempt from tax merely because it is not organized and operated for profit. In order to establish its exemption, it is necessary that every such organization claiming exemption file an application form with the Internal Revenue Service.

Section 1.501(a)-1(a)(3) of the regulations states that an organization claiming exemption under section 501(a) and described in any paragraph of section 501(c) (other than section 501(c)(1)) shall file the form of application prescribed by the Commissioner and shall include thereon such information as required by such form and the instructions issued thereto.

Section 1.501(c)(3)-1(a) of the regulations provides that, in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and

operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3).

Section 1.501(c)(3)-1(d)(2) of the regulations defines the word "charitable" as including relief of the poor and distressed or of the underprivileged.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations provides that the term "educational," as used in section 501(c)(3) of the Code, relates to:

- (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
- (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

Section 3.08 of Rev. Proc. 2011-9, 2011-1 I.R.B. 283 provides that an organization seeking recognition of exemption under section 501 (c)(3) must submit a completed Form 1023. A substantially completed application, including a letter application, is one that includes a detailed narrative statement of proposed activities and a narrative description of contemplated expenditures.

Section 4.03 of Rev. Proc. 2011-9, 2011-2 I.R.B. 283 provides that exempt status may be recognized in advance of an organization's operations if the proposed activities are described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements for exemption pursuant to the section of the Internal Revenue Code under which exemption is claimed. An organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. A mere restatement of exempt purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement.

In Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974), the court held that an organization seeking a ruling as to recognition of its tax-exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute.

In Church in Boston v. Commissioner, 71 T.C. 102, 1978 U.S., an organization made grants to various individuals, including officers of the church. The grants carried no legal obligation to repay any interest or principal. Although the church contended that the grants were made to assist the poor who were in need of food, clothing, shelter, and medical attention, the church failed to provide any documented criteria demonstrating the selection process of recipients and the reasons for the specific amounts given. The court affirmed the determination that the church failed to establish that its grant program constituted an activity in furtherance of an exempt purpose.

In La Verdad v. Commissioner, 82 T.C. 215 (1984), an organization was organized to provide education and charity, but failed to provide sufficient details regarding its proposed operations. The court held that it failed to prove that it would operate exclusively for exempt purposes under section 501(c)(3) of the Code.

In Peoples Prize v. Commissioner, T.C. Memo 2004-12 (2004). Petitioner has, for the most part, provided only generalizations in response to repeated requests by respondent for more detail on prospective activities. Such generalizations do not satisfy us that petitioner qualifies for the exemption.

In New Dynamics Foundation v. United States, 70 Fed. Cl. 782 (2006), the organization failed to establish an administrative record that showed it was operated for exclusively exempt purposes. The court found instead that it was part of a tax avoidance scheme and primarily provided private benefits.

Application of Law

The information you submitted is insufficient for us to conclude that you are organized and operated exclusively for charitable or educational purposes as specified in section 501(c)(3) of the Code and required in section 1.501(c)(3)-1(c)(1) of the regulations. To be exempt, an organization must provide a substantially complete application as specified in section 1.501-1(a)(2) and (3) of the regulations. In addition, section 1.501(c)(3)-1(a) of the regulations states that an exempt organization must show that it is both organized and operated exclusively for one or more of the purposes described in section 501(c)(3) of the Code..

Exemption from federal income tax is not a right; it is a strictly interpreted matter of legislative grace and the burden rests with the applicant to prove that it is entitled to exempt status as specified in Harding Hospital, Inc. v. United States, supra and as noted in New Dynamics Foundation, supra. Your application did include some information required by the application Form 1023 and its instructions, such as copies of your bylaws, organizing document and an activity description. However, the activity description did not include detailed information regarding your home ownership and low income housing services, housing renovations for the poor or transitional housing for the homeless. You did not provide information about how any of your programs will be operated. You mainly provided objectives for each of your programs. Your application does not satisfy the requirements of sections 1.501(a)-1(a)(2) and (3) of the regulations and section 3.08 of Rev. Proc. 2011-9, 2011-2 I.R.B. 283.

An organization must also satisfy the organizational and operational test described in the regulations to qualify for recognition as an organization exempt from federal taxation. An applicant must establish an administrative record showing that it operates primarily to accomplish an exempt purpose(s) described in section 501(c)(3) of the Code. While your Articles of Incorporation provide that you are organized for charitable purposes, you have not provided enough information to demonstrate that you operate exclusively for charitable purposes.

You are not presently operational and do not intend to commence operations of all of your activities until you are recognized as an exempt organization. Section 4.03 of Rev. Proc. 2011-9 provides that exempt status may be recognized in advance of operations if an applicant describes its proposed operations in sufficient detail to permit a conclusion that it will clearly meet the requirements for exemption in accordance with section 501 (c)(3) of the Code. However, as explicitly stated in La Verdad v. Commissioner, supra, a mere restatement of exempt purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement.

Based on the information you provided, you have failed to establish that your operations will be charitable because you provide relief of the poor and distressed. Nor have you established that your operations will be educational within the meaning of Section 1.501(c)(3)-1(d)(3)(i) of the regulations. Section 1.501(c)(3)-1(d)(2) of the regulations defines the word "charitable" as including relief of the poor and distressed or of the underprivileged. Similar to the church described in Church in Boston v. Commissioner, supra you state your target clients are individuals of low income who are having financial difficulties, but you did not provide information about how clients are made aware of your services, how you determine if clients are indeed low income or how you provide assistance. You did provide information regarding your state's Housing Trust Fund. However, you have not explained how you will administer the grant program utilizing the state funds. You have not demonstrated that the grants will be made in an objective and nondiscriminatory manner and that the distribution of such grants will be made in furtherance of an exempt purpose.

Your description of your proposed affordable housing program is limited to the statement that the housing projects will have at least 75% of the units occupied by residents that qualify as low income and either 20% occupied by residents that are also very low income or 40% occupied by residents that do not exceed 120% of the area's median income. In addition, you also described a transitional housing program for the homeless, however, the description was limited to the following: you will ensure all residents (including those who were in drug/alcohol rehab or recently incarcerated) have a stability plan in place for short and long term goals; you will provide educational classes; and you will provide assistance in obtaining permanent housing. No other information was provided, including facility information, fee information, how potential clients are made aware of the program, coordination with government/community agencies, educational materials, instructors, staff members, development of stabilities plans or how permanent housing is located for residents. Finally, you stated that you could not provide detailed information because the program will begin only after you finish building your infrastructure and get certification from the housing trust.

As noted above you have not established that your operations will be educational within the meaning of Section 1.501(c)(3)-1(d)(3)(i) of the regulations. Your proposed financial literacy classes and one-on-one assessment and tutoring in financial comprehension and budgeting has not been described in detail. You did indicate that you plan to conduct sessions 3 days per week. However, the only other information provided was that the program will consist mainly of budgeting and savings issues for low income families. You do not plan to charge a fee, but if you decide to charge a fee, it will be affordable. You do not have an instructor or a curriculum at

this time. Subsequently, you indicated that you will only provide transportation to individuals to financial literacy classes conducted by others in the community. Your proposed home ownership classes were similarly described in a very limited manner. You stated that the program is new and you do not have a curriculum or class schedules, nor do you know how the classes will be structured.

After our fourth request for additional information regarding your activities, you stated that 90% of your time will be devoted to a first time homebuyers counseling session and providing transportation to financial literacy sessions provided by other organizations. The other 10% of your time would be spent on home renovations for low income persons living in unfit homes. Upon our request for clarification regarding the proposed activities that were described in your initial application for exemption and in your earlier responses to our requests for additional information, you stated that you still intend to conduct the activities initially described. Additional information was requested five times regarding your proposed activities. However, similar to the organization in Peoples Prize v. Commissioner, supra, you failed to provide the requested information with sufficient details regarding your proposed activities. You failed to demonstrate that your activities are or will be conducted in an exclusively charitable or educational manner as required.

Conclusion

An organization that fails to provide a substantially completed application and meet the organizational and operational tests described in the regulations is not exempt. You have not provided sufficient evidence to demonstrate that you are organized and operated for exempt purposes within the meaning of section 501 (c)(3) of the Code. You have failed to establish that your program constitutes an activity that furthers a charitable purpose by actually providing relief to persons who are poor and distressed or underprivileged. You have not established that you will operate for charitable purposes, nor have you established that your programs are educational. Accordingly, you do not qualify for exemption under section 501(c)(3).

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, Exempt Organization Appeal Procedures for Unagreed Issues.

Types of information that should be included in your appeal can be found on page 2 of Publication 892. These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;

4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosure, Publication 892